IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

THURSDAY, THE 15TH NOVEMBER 2007 / 24TH KARTHIKA 1929

WP(C).No. 28200 of 2007(F)

PETITIONER:

P.N. THILAKAN,
PALAKKAL HOUSE, CHITTATTUKARA, VADAKKEKARA P.O.,
NORTH PARAVUR, ERNAKULAM DISTRICT.

BY ADV. DR.K.P.SATHEESAN
SRI.K.K.GOPINATHAN NAIR
SRI.P.MOHANDAS (ERNAKULAM)

RESPONDENTS:
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1. **THE COMMISSIONER OF EXCISE,**
   EXCISE COMMISSIONERATE, THIRUVANANTHAPURAM.

2. **THE ASSISTANT EXCISE COMMISSIOINER,**
   ERNAKULAM.

3. **P.R. SUBRAMANIAN,**
   PAZHAMPILLY HOUSE, SYED MUHAMMED ROAD,
   EDAVANAKKAD P.O., ERNAKULAM.

BY ADV. SRI.P.K.SURESH KUMAR
SMT.PRIYA VIJAYAN
BY GOVERNMENT PLEADER SRI.P.K.RAVIKRISHNAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 15/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C)NO.28200//2007

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE LICENSE FOR CONDUCTING THE TODDY SHOP FOR THE YEAR 1998-99.

EXT.P2:- -CO- FOR THE YEAR 99-2000.

EXT.P3:- COPY OF THE RELEVANT PAGES OF THE LICENSE FOR THE YEAR 02-03.

EXT.P4:- -DO- FOR THE YEAR 07-08.

EXT.P5:- COPY OF THE JUDGMENT DT. 17.7.07 IN WPC NO.21953/07.

EXT.P6:- COPY OF THE ORDER NO.E4-650-7/07 DT. 1.9.07 ISSUED BY THE 2ND RESPONDENT.

RESPONDENTS EXHIBITS

EXT.R3(a):- COPY OF THE TAX ASSESSMENT REGISTER KEPT IN THE EDAVANAKKAD GRAMA PANCHAYAT.

EXT.R3(b):- COPY OF THE PROCEEDINGS NO.B8-3332/RA DT. 20.8.81 OF THE KERALA WAKF BOARD.

/TRUE COPY/

P.S. TO JUDGE

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THOTTATHIL B. RADHAKRISHNAN, J.

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WP(C).No.28200 of 2007-F

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Dated this the 15th day of November, 2007.

JUDGMENT

1. By Ext.P6, the Assistant Excise Commissioner has recommended the cancellation of the licence issued to the petitioner. This itself means that the proceedings have not culminated.

2. The primary controversy between the petitioner and the third respondent is as to whether the toddy shop in question is within the prohibited distance. The petitioner and the third respondent appear to have conflicting versions as to whether a particular structure is a mosque or is not a place of worship as envisaged by the relevant rules.

3. In the aforesaid backdrop, particularly when the proceedings are yet to culminate and the matter

requires to be considered by the Excise Commissioner, this writ petition is disposed of, without entering on merits, however directing that the petitioner and the third respondent shall be heard by the Excise Commissioner before finalising proceedings on the basis of Ext.P6. It is clarified that all contentions available to parties, on facts, could be placed before the Excise Commissioner for consideration. Let a final decision be taken in accordance with law, within an outer limit of two months from the date of receipt of a copy of this judgment.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

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